



# Corporate Insolvency and Governance Act 2020

## 2020 CHAPTER 12

*Power to amend corporate insolvency or governance legislation: Great Britain*

### **20 Regulations to amend legislation: Great Britain**

- (1) The Secretary of State may by regulations amend, or modify the effect of, corporate insolvency or governance legislation so as to—
  - (a) change the conditions that must be met before a corporate insolvency or restructuring procedure applies to entities of any description (whether by adding, varying or removing any condition),
  - (b) change the way in which a corporate insolvency or restructuring procedure applies in relation to entities of any description, or
  - (c) change or disapply any duty of a person with corporate responsibility or the liability of such a person to any sanction.
- (2) Regulations under this section may—
  - (a) make different provision for different purposes;
  - (b) make provision binding the Crown.
- (3) Regulations under this section must be made in accordance with sections 21 to 26.

### **21 Purposes**

- (1) The Secretary of State may only make regulations under section 20(1)(a) or (b) if satisfied that the regulations are expedient for any of the following purposes—
  - (a) reducing, or assisting in the reduction of, the number of entities entering into corporate insolvency or restructuring procedures for reasons relating to the effects of coronavirus on businesses or on the economy of the United Kingdom;
  - (b) mitigating or otherwise dealing with the effect on corporate insolvency or restructuring procedures of any increase or potential increase in the number

of entities entering into those procedures for the reasons referred to in paragraph (a);

- (c) mitigating difficulties that corporate insolvency or restructuring procedures might impose on a business in view of—
    - (i) any worsening of the financial position of the business in consequence of, or for reasons relating to, coronavirus,
    - (ii) constraints on people’s ability to work, or to be in proximity to each other, as a result of coronavirus, or
    - (iii) measures for public health taken in response to coronavirus.
- (2) The Secretary of State may only make regulations under section 20(1)(c) if satisfied that the regulations are expedient for the purpose of securing that the duties of persons with corporate responsibility, or the liability of those persons to any sanction, take due account of the effects of coronavirus on businesses or on the economy of the United Kingdom.

## 22 Restrictions

- (1) Before making regulations under section 20 the Secretary of State must consider the effect of the regulations on persons likely to be affected by them (for example, debtors, creditors or employees).
- (2) The Secretary of State may only make regulations under section 20 if satisfied—
  - (a) that the need for the provision made by the regulations is urgent,
  - (b) that the provision made by the regulations is proportionate to the purpose for which it is made,
  - (c) that it is not practicable without legislation to bring about the result intended to be brought about by that provision, and
  - (d) if the Secretary of State could make the same provision in other subordinate legislation, that doing so would risk not achieving the purpose for which the regulations are made (because of possible delay or for any other reason).
- (3) Regulations under section 20—
  - (a) may not create a criminal offence or civil penalty (but may modify the circumstances in which a person is guilty of an existing offence or liable for an existing civil penalty);
  - (b) may not make provision so as to impose or increase a fee.
- (4) Regulations under section 20 may not make provision that could be made by an Act of the Scottish Parliament unless the Secretary of State has first consulted the Scottish Ministers.

## 23 Time-limited effect

- (1) Regulations under section 20 must be framed so that any provision made by them—
  - (a) has effect only for a period not exceeding six months, or
  - (b) applies only in relation to circumstances occurring in a period not exceeding six months.
- (2) This does not prevent further regulations under section 20 from—
  - (a) making the same provision for, or applying in relation to, subsequent periods (not exceeding six months at a time);

- (b) extending (by up to six months) the period for or in relation to which earlier regulations under that section apply.
- (3) The Secretary of State must keep regulations under section 20 under review during the period for which they have effect or in relation to which they apply.
- (4) If on such a review the Secretary of State is satisfied that that period—
  - (a) is longer than expedient for the purpose for which the regulations were made, or
  - (b) has ceased to be proportionate to that purpose,the Secretary of State must by regulations under this subsection revoke or amend the regulations as appropriate.
- (5) Regulations under subsection (4) may contain transitional provision or savings.

## **24 Expiry**

- (1) The Secretary of State may not make regulations under section 20 after 30 April 2021.
- (2) Where regulations under section 20 are in force on the date specified in subsection (1), that subsection does not—
  - (a) affect the continued operation of the regulations, or
  - (b) prevent the making of further regulations under section 20 on one or more occasions, where those further regulations make the same provision for, or applying in relation to, subsequent periods (not exceeding six months at a time).
- (3) The Secretary of State may by regulations substitute a later date for the date for the time being specified in subsection (1).
- (4) The power in subsection (3)—
  - (a) may not be exercised so as to substitute a date which is—
    - (i) after the period of one year beginning with the date for the time being specified in subsection (1), or
    - (ii) after the period of two years beginning with the date on which this Act is passed, but
  - (b) may be exercised more than once.

## **25 Consequential provision etc**

- (1) The Secretary of State may by regulations make consequential, incidental or supplementary provision, or transitional provision or savings, in connection with provision made by regulations under section 20.
- (2) Regulations under this section may—
  - (a) make provision by amending or modifying the effect of any enactment (including this Act);
  - (b) make different provision for different purposes;
  - (c) make provision binding the Crown.

## 26 Procedure for regulations

- (1) Regulations under sections 20 to 25 are to be made by statutory instrument.
- (2) A statutory instrument containing—
  - (a) regulations made under section 20, other than one to which subsection (6)(a) applies, or
  - (b) regulations made under section 25 which make provision by amending an Act or an Act of the Scottish Parliament,must be laid before Parliament as soon as reasonably practicable after being made.
- (3) Regulations contained in a statutory instrument laid before Parliament by virtue of subsection (2) cease to have effect at the end of the period of 40 days beginning with the day on which the instrument is made, unless during that period the instrument is approved by a resolution of each House of Parliament.
- (4) In calculating the period of 40 days, no account is to be taken of any time during which—
  - (a) Parliament is dissolved or prorogued, or
  - (b) both Houses of Parliament are adjourned for more than 4 days.
- (5) Where regulations cease to have effect as a result of subsection (3) that does not—
  - (a) affect anything previously done under or by virtue of the regulations, or
  - (b) prevent the making of new regulations.
- (6) A statutory instrument containing—
  - (a) regulations under section 20 which merely revoke other regulations under that section (with or without transitional provision), or
  - (b) regulations under section 23(4),is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Regulations under section 24(3) may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.
- (8) A statutory instrument containing regulations under section 25 which do not make provision by amending an Act or an Act of the Scottish Parliament is subject to annulment in pursuance of a resolution of either House of Parliament (unless the regulations were contained in a statutory instrument laid before Parliament by virtue of subsection (2)).

## 27 Interpretation

- (1) In sections 20 to 26 and this section—
  - “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
  - “corporate insolvency or governance legislation” means—
    - (a) the Insolvency Act 1986, except so far as relating to the insolvency or bankruptcy of individuals,
    - (b) Part 26A of the Companies Act 2006 (arrangements and reconstructions for companies in financial difficulty),
    - (c) the Company Directors Disqualification Act 1986,

- (d) this Act,
- (e) any subordinate legislation made under the enactments specified in paragraphs (a) to (d),
- (f) the Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), and
- (g) after IP completion day, [Regulation \(EU\) 2015/848](#) on insolvency proceedings;

“corporate insolvency or restructuring procedure” means—

- (a) a moratorium under Part A1 of the Insolvency Act 1986;
- (b) a company voluntary arrangement under Part 1 of that Act (including a moratorium under section 1A of that Act in a case where such a moratorium applies after the coming into force of paragraph 30 of Schedule 3);
- (c) administration under Part 2 of that Act;
- (d) receivership to which Part 3 of that Act applies;
- (e) winding up under Part 4 or 5 of that Act;
- (f) the procedure provided for by Part 26A of the Companies Act 2006;

“enactment” includes an Act of the Scottish Parliament and an instrument made under such an Act;

“person with corporate responsibility” means—

- (a) in relation to a company, a director, manager, secretary or other officer of the body,
- (b) in relation to a partnership or limited liability partnership, a partner or member, and
- (c) in relation to any other entity, a person with responsibility for managing the entity;

“subordinate legislation” has the meaning given by section 21(1) of the Interpretation Act 1978.

- (2) References to an enactment in subsection (1) include in particular that enactment as applied by any other enactment, with or without modifications, to partnerships, limited liability partnerships or other entities.